

## Executive Advisory Body

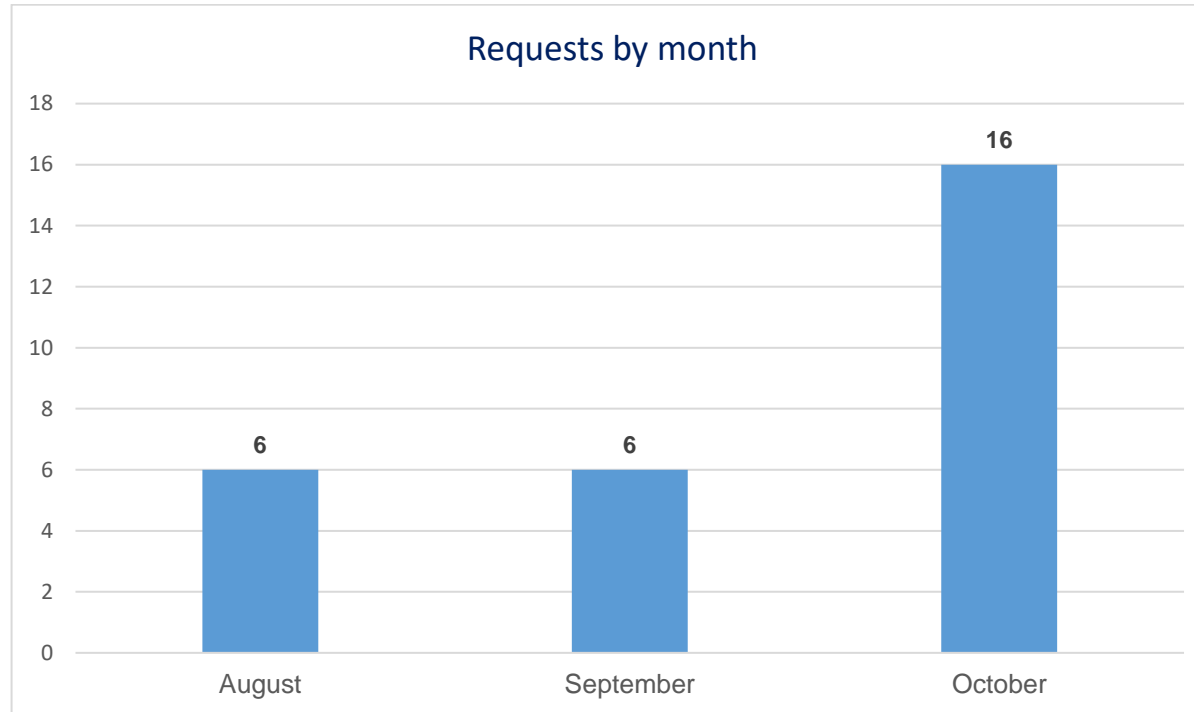
<b>Date of Meeting</b>	Tuesday 29 November 2022
<b>Subject</b>	Overview of compliance with the Freedom of Information (Scotland) Act 2002
<b>Agenda No.</b>	Below the Line
<b>Paper No.</b>	33.7
<b>Prepared By</b>	Freedom of Information team
<b>Purpose</b>	Monitor

### 1. Background

- 1.1. The purpose of this paper is to provide the Executive Advisory Body with an overview of the requests for information that we have received in the period from August 2022 to October 2022. It also sets out our compliance with the statutory timescales for responding. Compliance with the timescales contributes to our values of dignity, fairness and respect by demonstrating transparency and assisting individuals to exercise their right to information.

### 2. Key points

- 2.1. Since 1 August 2022 Social Security Scotland has received 28 new requests for information. Six of the requests were received in August, six in September, and 16 in October. Since the last report 22 responses and one response to a request for review have been issued. There are 11 current requests.



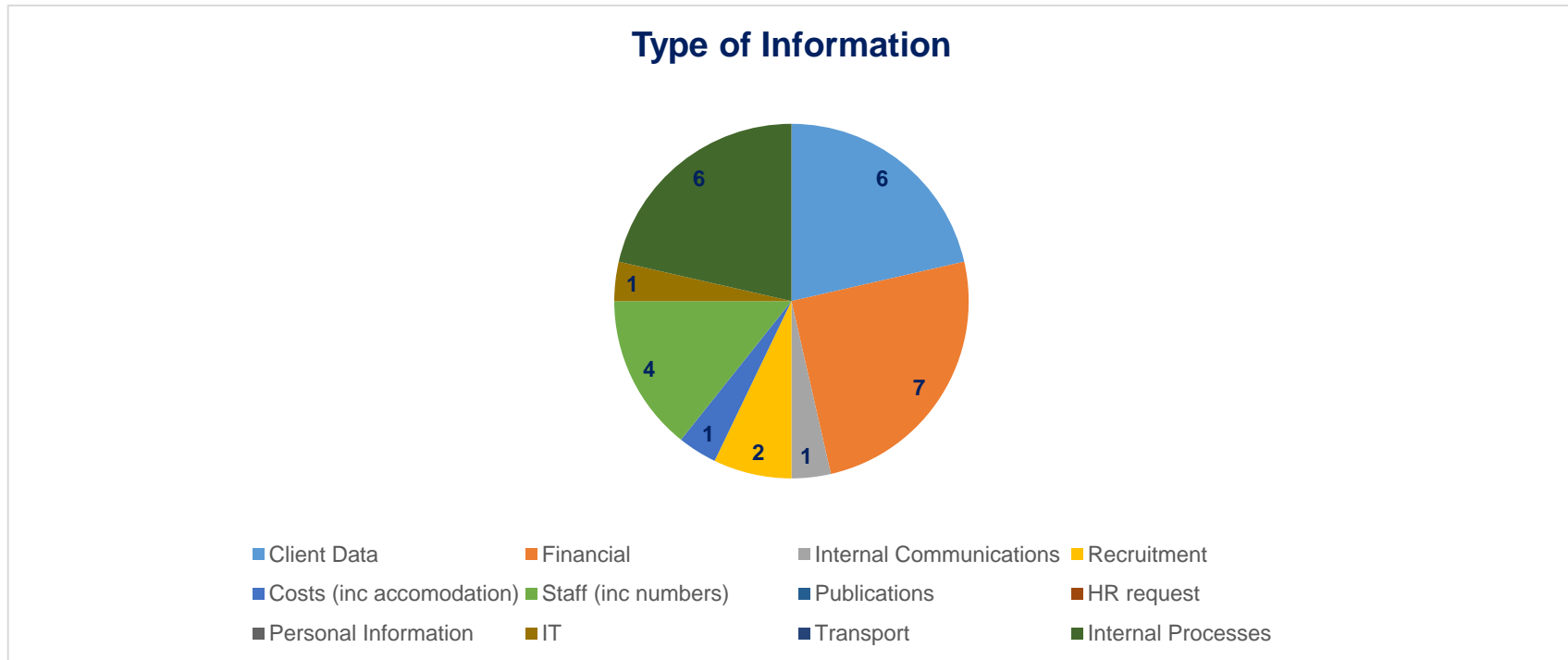
2.2. Between August 2022 and October 2022, we have received 28 requests for information with no requests for review. For comparison, during the same period in 2021 we received seven requests for information with no requests for review.

2.3. The Scottish Information Commissioner monitors public authorities compliance with the Act. The information provided to the Commissioner includes compliance with the statutory timescales for response which is 20 working days. As agreed with the Scottish Information Commissioner, core Scottish Government and its agencies have a target of responding to 95% of

requests within the timescales afforded by the Act. Social Security Scotland has exceeded this target with an on-time response rate of 100% since the last report.

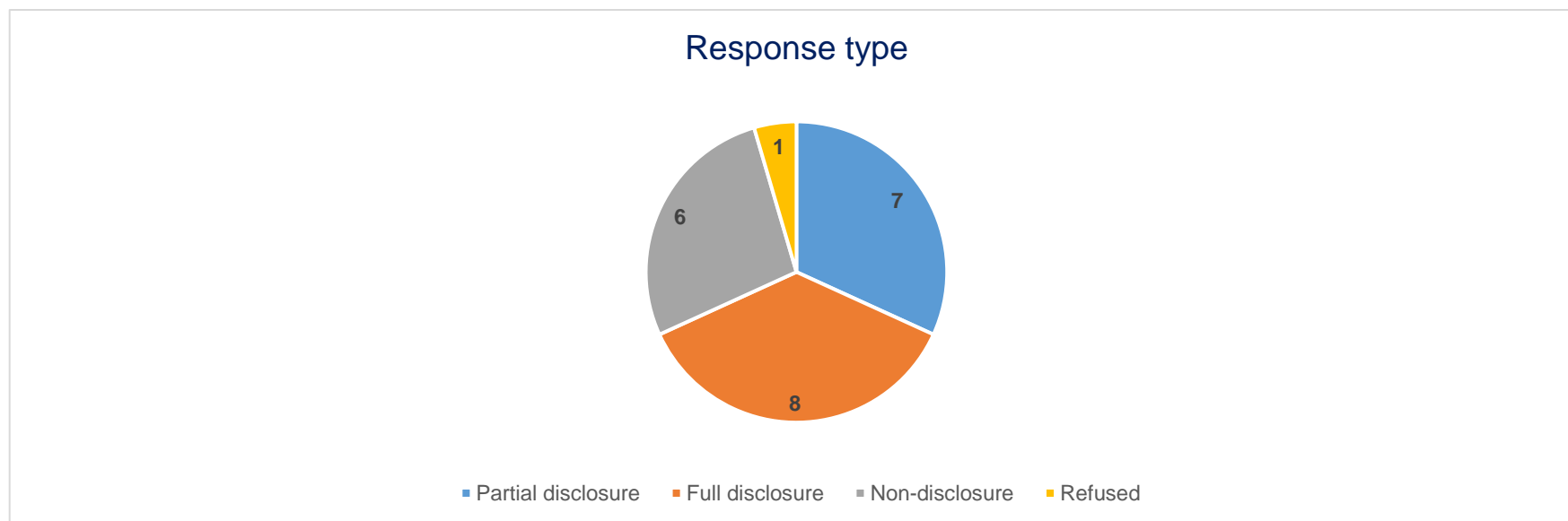
A monthly performance breakdown is provided in Annex A.

- 2.4. We record the type of information requested and the requester in order to identify patterns and inform decisions on proactive publication of information.



Of the 28 requests received in the period specified, 19 were from a political source, two were from journalists, six were from members of the public and one was submitted through the “What-do-they-know?” website.

2.4 Of the 22 responses issued, information was disclosed in full in eight requests and in part in seven requests. No information was disclosed in six requests and one request was refused. A notice applied was Section 12 of the Act. Exemptions applied to withhold information were Section 17, Section 25(1), Section 27(1), Section 35(1)(a), and Section 30(c). Details of notices and exemptions can be found in Annex B.



2.5 One response to a request for review was completed. The initial request was treated as Business as Usual, and although it was not clear if the individual was dissatisfied with our response, we felt it was prudent to treat the further communication as a request for review. Although we view that the original request response was not necessarily deficient, additional information was provided to the applicant in the review response.

2.6 In light of the information requested by applicants a decision has been taken to proactively publish within 12 weeks, the agenda, accompanying papers and minutes of the Executive Advisory Board and the Audit and Assurance Committee. These can be found here:

<https://www.socialsecurity.gov.scot/publications>

2.7 We have not been notified of any applications to the Scottish Information Commissioner since the last report.

### **3. Conclusions**

3.1. The Executive Advisory Body are invited to note the contents of this paper.

#### 4. GOVERNANCE CHECKLIST

Strategic Objective		Contribution
Helping to deliver a social security system with dignity, fairness and respect.		Compliance with the timescales contributes to our values of dignity, fairness and respect by demonstrating transparency and assisting individuals to exercise their right to information.
Supporting people in Scotland to access devolved benefits that they are entitled to.		Not Applicable
Running our service in a responsible way.		This paper contributes to our continuously improving our services.
Strategic consideration	Impact	
Environment	Not Applicable	
Governance	This paper is for discussion and sets out how we have complied with our obligations under the Freedom of Information (Scotland Act) 2002 in the period.	
Data	Not Applicable	
Finance	Good information rights management and properly formed and considered responses reduces the need for review and mitigates against appeals.	
Staff	Not Applicable	
Equalities	Not Applicable	
Estates	Not Applicable	

Strategic Objective	Contribution
Communications and Presentation	Respecting rights of individuals contributes to client and stakeholder confidence in the delivery of the benefit system by Social Security Scotland.

**An Impact Assessment** must be carried out during the development of all new Agency policies and services and when making significant changes to policies and services. The Corporate Assurance team should be involved from an early stage to provide guidance and advice relating to completing impact assessments.

[Impact Assessment Saltire Page](#)

General Impact Assessment Queries: [Corporateassuranceteam@socialsecurity.gov.scot](mailto:Corporateassuranceteam@socialsecurity.gov.scot)

Equality Impact Assessment Queries: [Corporateassuranceteam@socialsecurity.gov.scot](mailto:Corporateassuranceteam@socialsecurity.gov.scot)

**Please complete the below table.**

Type of Impact Assessment	Required (Y/N)	If No - briefly state reason e.g. Not relevant/Not eligible – agreed with Deputy Director	If yes – briefly state progress to date, highlight any significant issues.
<a href="#">Business and Regulatory Impact Assessment (BRIA)</a>	N	Not relevant	
<a href="#">Child Rights and Wellbeing Impact Assessment (CRWIA)</a>	N	Not relevant	
<a href="#">Data Protection Impact Assessment</a>	N	Not relevant	
<a href="#">Equality Impact Assessment (EQIA)</a>	N	Not relevant	
<a href="#">Fairer Scotland Duty assessment</a>	N	Not relevant	
<a href="#">Future proofing legislation</a>	N	Not relevant	
<a href="#">Human rights in policy making</a>	N	Not relevant	
<a href="#">Islands Communities Impact Assessment (ICIA)</a>	N	Not relevant	

Type of Impact Assessment	Required (Y/N)	If No - briefly state reason e.g. Not relevant/Not eligible – agreed with Deputy Director	If yes – briefly state progress to date, highlight any significant issues.
<u>Strategic Environment Assessment (SEA)</u>	N	Not relevant	



**Information Commissioner Monthly Performance Reports (Jan 2022 – April 2022)**

**Annex A**

<b>Month</b>	<b>No. Requests On Time</b>	<b>No. Requests Late, Responded</b>	<b>No. Request Late, In Progress</b>	<b>% Reqs On Time</b>	<b>No. Reviews On Time</b>	<b>No. Reviews Late, Responded</b>	<b>No. Reviews Late, In Progress</b>	<b>% Revs On Time</b>
August	8	0	0	100%	1	n/a	n/a	100%
September	4	0	0	100%	n/a	n/a	n/a	n/a
October	10	0	0	100%	n/a	n/a	n/a	n/a



## FOI Exemptions

### Annex B

Notices commonly applied by Social Security Scotland are:

- Section 12(exceeds the upper cost limit): allows a public authority to refuse to deal with a request where it estimates that it would exceed £600.
- Section 14(1)(request is vexatious): Sometimes a request may be so patently unreasonable or objectionable that it will obviously be vexatious, it can only be applied to the request itself and not the individual who submitted it.
- Section(17)(information not held): the public authority does not have access to the information requested or the information does not exist.
- Section 18(1) refusal to confirm or deny whether information is held.

Exemptions commonly applied by Social Security Scotland are:

- Section 25(1)(information otherwise accessible): This allows information to be withheld if it is already accessible to the applicant.
- Section 27(1)(information intended for future publication): This allows information to be withheld if the information intended for publication within 12 weeks of the request being submitted.
- Section 29(1)(a)(formulation of Scottish Government policy): This allows information to be withheld if the information relates to the formulation or development of government policy and ministerial communications.
- Section 30(b)(i)(free and frank provision of advice): This allows information to be withheld if disclosure of the information would, or would be likely to, cause substantial harm.
- Section 30(b)(ii)(free and frank exchange of views): This allows information to be withheld if disclosure of the information would, or would be likely to, cause substantial harm.
- Section 30(c)( effective conduct of public affairs): This allows information to be withheld where disclosure would, or would be likely to, cause substantial harm.
- Section 33(1)(b)(commercial interests): This allows information to be withheld where it relates to the audit of the accounts of other public authorities, or the

examination of the economy, efficiency and effectiveness with which other public authorities use their resources in discharging their functions.

- Section 35(1)(a)(prevention or detection of crime): This allows information to be withheld if disclosure of the information would, or would be likely to, cause substantial prejudice.
- Section 38(1)(b)(personal data relating to third party): This allows information to be withheld if it is personal data.

### **Qualified exemptions**

Most of these exemptions are subject to the public interest test. These are known as “qualified exemptions.”

Where a qualified exemption applies, the information must be disclosed unless the public interest in disclosing the information is outweighed by the public interest in maintaining the exemption. Where the competing public interests are evenly balanced, the information should be disclosed.

### **Absolute exemptions**

Exemptions which are not subject to the public interest test are known as “absolute exemptions.”

Where an absolute exemption applies, a public authority is entitled to withhold the information without going on to consider the public interest. They include:

Information Otherwise Accessible - Section 25

Prohibitions on Disclosure - Section 26